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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)	
11345/058001	

Application Number	Filed
10/519,236-Conf. #9704	December 22, 2004

First Named Inventor: Philippe Perrot

Art Unit	Examiner
2442	A. Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant /inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [x] attorney or agent of record. Registration number 33,986
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____

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August 3, 2010
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [ ] *Total of 1 forms are submitted.

Docket No.: 11345/058001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Philippe Perrot	Confirmation No.: 9704
Application No.: 10/519,236	Art Unit: 2442
Filed: December 22, 2004	Examiner: A. Nguyen
For: DISCOVERY INFORMATION FOR IP MULTICAST	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Authority

Upon receiving the final office action dated March 4, 2010, (hereinafter, the "Action"), Applicant's claims have been rejected at least twice, so filing a Notice of Appeal with proper fee and a pre-appeal brief request for review is proper. *See,* 35 USC § 134.

Remarks

Claims 1-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2005/0028206 (hereinafter "Cameron") in view of U.S. Patent Application Publication No. 2006/0212921 (hereinafter "Carr"). For at least the reasons set forth below, these rejections are respectfully traversed.

"To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte*

Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). *See* MPEP § 706.02(j). Applicant respectfully asserts that the Examiner has failed to do so.

It is a well-established tenant of patent law that the Examiner clearly has the burden to produce a *prima facie* case for a rejection under section 103. When the Examiner fails to produce a *prima facie* case, Applicant is under no obligation to submit evidence of non-obviousness. *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). *See* also MPEP § 2142. Applicant respectfully disagrees with the Examiner's contentions and asserts that the Examiner has failed to show sufficient evidence to establish a *prima facie* case of obviousness with respect to the pending claims. Specifically, the Examiner fails to meet her burden by showing that the pending claims are disclosed or rendered obvious by the cited references. For at least the reasons articulated below, the Examiner's rejection should be reversed.

The claimed invention relates to multicasting offers for multimedia services in a transport stream bundle. *See* publication of present application, Abstract. In the claimed invention, there are multiple types of information that are *each* multicast to a *different* localization (IP address and port). The multiple types of information include offer information, stream information, and the multi-service transport stream itself. Each of these pieces of information is multicast to a *distinct localization*. Accordingly, (i) offer information is multicast to a predetermined offer localization known to the subscriber's set top box (STB); (ii) stream information is multicast to a service provider offer localization; and (iii) the transport stream is multicast in the form of IP packets to a stream localization. *See, e.g.*, the first and second limitations of independent claim 1 and the publication of the present application, paragraphs [0050]-[0057]. Specifically, independent claim 1 recites, in part, that "the service provider offer localization comprises a first IP address and a first port and the stream localization comprises a

second IP address and a second port, wherein the first IP address and the second IP address are different, wherein the first port and the second port are different, and wherein the first port and the second port are each configured to receive data transmitted over the IP multicast television network." Independent claims 3 and 8-10 include substantially similar limitations.

Cameron fails to disclose or render obvious the three distinct localizations recited in the claims

Applicant respectfully asserts that Cameron fails to disclose at least the three distinct localizations that are used to multicast different pieces of information which are all needed in order for a subscriber's set top box to receive offers for multimedia services and obtain the transport stream corresponding to selected services from the bundle of transport streams. In fact, the Examiner *impliedly admits* this deficiency in Cameron by citing the same portion of paragraph [0066] of Cameron (related to a DHCP server) to disclose both the service provider offer localization within the IP multicast television network and the predetermined offer localization known to a set top box associated with a subscriber. *See* Action, p. 3. Thus, as admitted by the Examiner, Cameron fails to disclose or render obvious the three distinct localizations required by the independent claims.

In fact, Applicant asserts that that the DHCP server in Cameron is neither a stream localization nor a service provider offer localization, as contended by the Examiner. Paragraph [0066] of Cameron discloses the DTVM (a software application) as including a feature for multicast download where information required to boot a network device to a multicast group is constantly delivered by a network server. As noted by the Examiner on page 3 of the Action, the DHCP server in Cameron is configured to return the multicast address and port as parameters in a BOOTP response. The network device is programmed to join the multicast group and download a bootstrap program to local memory and boot from the local memory rather than across the network. *See* Cameron, paragraph [0066]. Thus, the cited

portion of Cameron discloses a multicast address and port that are used when a *network device wishes to join a multicast group*. In other words, the multicast address and port disclosed in this cited portion of Cameron is not used to multicast *stream information* (*i.e.,* transport stream information) nor is it used to multicast a *transport stream* itself in the form of IP packets, both as required by the independent claims. Thus, the multicast address and port disclosed in paragraph [0066] of Cameron cannot be equated to either the stream localization or the service provider offer localization, because the multicast address and port in this cited portion of Cameron are not used for the same purpose (*i.e.,* to multicast a transport stream itself or transport stream information that links a multi-service transport stream and a stream localization within the IP multicast network) as either the stream localization or the service provider offer localization recited in the independent claims.

Carr fails to supply that which Cameron lacks

Applicant asserts that Carr fails to supply that which Cameron lacks. With regard to the limitations of the pending independent claims, Carr discloses multiple IP addresses and ports. *See, e.g.*, Carr, Abstract. Carr also discloses a transport stream program where ancillary data may be sent separately from the associated audio and video. *See* Carr, paragraph [0017]. Further, Carr discloses a storage medium in a transport operator (*i.e.*, controller), a server, and multiple receiving systems. *See* Carr, FIG. 2. A storage medium in Carr, however, is not the same as a localization (*i.e.*, an IP address and port), as required by the claimed invention. *See* Carr, FIG. 2. With regard to localizations, Carr merely discloses that ATVEF (Advanced Television Enhancement Forum) announcements, which indicate that enhancement data is being transmitted, conventionally arrive at a predetermined IP address and port. *See* Carr, paragraphs [0020] and [0022]. Clearly, an ATVEF announcement in Carr cannot be all three of the offer information, the stream information, and the multi-service transport stream. In other words, Carr

fails to disclose or render obvious the three distinct localizations (*i.e.*, stream localization, service provider offer localization, and predetermined offer localization) required by the independent claims.

In view of the above, it is clear that the Examiner's contentions fail to support an obviousness rejection of the independent claims. Further, the pending dependent claims, which depend on the independent claims, are patentable for at least the same reasons. Thus, the Examiner has failed to establish a *prima facie* case of obviousness. Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

In view of the above, the Examiner's contentions do not support the rejection of the pending claims under 35 U.S.C. § 103 because the Examiner has failed to establish a *prima facie* case of obviousness. Accordingly, a favorable decision from the panel is respectfully requested. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 11345/058001).

Dated: August 3, 2010

Respectfully submitted,

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